IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14660 of 2003

AND

CIVIL APPLICATION No 8538 of 2003

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SOLANKI NARESHBHAI GOVINDBHAI

Versus

CHIEF DIVISIONAL MANAGER, INDIAN OIL CORPORATION LTD.

AND ANOTHER

Appearance:

MR JV JAPEE for the Petitioner
MR RC JANI for Respondent No. 1
MR MANISH R BHATT for Respondent No. 2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 22/03/2004

ORAL JUDGEMENT

RULE returnable today. Learned advocates Mr.Jani and Mr.Bhatt waive service of rule. With the consent of the learned advocates, the petition is heard and finally disposed of today.

Pursuant to the advertisement issued by the respondent No.1 - Indian Oil Corporation Ltd. (hereinafter referred to as 'the Corporation') the petitioner and the respondent No.2 applied for dealership in petroleum products for Patan town.

It is a common ground that the said dealership was reserved for a Scheduled Caste candidate. At the relevant time the petitioner and the respondent No.2 both were of Scheduled Caste. The interviews were held in the month of September, 2003. The respondent No.2 and the petitioner have been selected and are empaneled at Serial Nos.1 and 2 respectively.

It is the claim of the petitioner that since the date of advertisement there has been a change by which the respondent No.2 has ceased to be a Scheduled Caste candidate. The respondent No.2 has, thus, become ineligible for dealership in Patan town which is reserved for a Scheduled Caste candidate.

The respondent No.2 belongs to a 'Mochi' community. By Notification dated 18th December, 2002 issued by the Government of India being Constitution of India (Scheduled Castes) Order (Second Amendment) Rules, 2002, the entry 'Mochi' for the State of Gujarat except the Dang district and Umargaon taluka of Valsad district has been deleted. In view of the said amendment with effect from 18th December, 2002 the caste 'Mochi' in the State of Gujarat except the above referred two areas has ceased to be a Scheduled Caste. Indisputably, the respondent No.2 is 'Mochi' by caste of Patan town. He has, therefore, since 18th December, 2002, ceased to be a Scheduled Caste person.

Pursuant to the above amendment the Government of Gujarat has, on 18th February, 2003, issued a resolution. By the said Resolution the caste certificates given to the 'Mochis' of the State of Gujarat except in the aforesaid two areas are ordered to be cancelled. It has been further directed that such person shall not be entitled to any benefit on the basis of such certificate.

The aforesaid Notification dated 18th December, 2002 was the subject matter of challenge in Special Civil Application No.6165/2003. The said challenge has failed in as much as the said writ petition has been dismissed by judgment and order dated 5th February, 2004 (Coram: R.K.Abichandani and D.H.Waghela, JJ.).

In above view of the matter the respondent No.2 having ceased to be a Scheduled Caste candidate is not entitled to the benefit of being a Scheduled Caste person on and from 18th December, 2002. The dealership in question is reserved for a Scheduled Caste candidate alone. The respondent No.2 has, therefore, become ineligible for such dealership.

In above view of the matter the petition succeeds. The selection of the respondent No.2 for the dealership of petroleum products for Patan town as a Scheduled Caste candidate is held to be bad and illegal. The Corporation shall consider the grant of the said dealership from amongst the remaining selected candidates.

Rule is made absolute in the above terms. The parties shall bear their own costs. Civil Application stands disposed of. Ad-interim order stands vacated.

(Ms. R.M.Doshit, J.)

/sakkaf